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OFFICE OF PETITIONS

In re Application of Takenaka	:	
Application No. 10/677,408	:	Decision on Petition
Filing Date: October 1, 2003	:	
Attorney Docket No. 5095-4070	:	

This is a decision on the petition under 37 CFR 1.181, filed April 12, 2007, to withdraw the holding of abandonment.

The petition is **granted**.

The above-identified application was deemed abandoned for failure to reply in a timely manner to the non-final Office action including a requirement for restriction/election mailed August 25, 2006, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application was considered abandoned as of September 26, 2006. A Notice of Abandonment was mailed April 6, 2007.

Petitioner states a reply was timely mailed on September 22, 2006. Petitioner states the reply included a transmittal sheet and a response to the restriction requirement. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing date of September 22, 2006, which is on or before the due date of September 25, 2006.

One may prove the timely filing of papers by providing a showing in compliance with 37 CFR 1.8(b).

37 CFR 1.8(b) states,

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office ..., the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of August 25, 2006, is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed on September 22, 2006.

This application is being referred to Technology Center Art Unit 3682 for appropriate action in the normal course of business on the reply received with petition.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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